

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8738 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVESHKUMAR BHAGVATPRASAD BHATT

Versus

DIVISIONAL CONTROLLER

Appearance:

MR B.G. JANI for Petitioner

MR.I.M. PANDYA for MR YS LAKHANI for Respondent No. 1

SERVED for Respondent No. 2

CORAM : R.K.ABICHANDANI, J.

Date of decision: 15/03/96

ORAL JUDGEMENT

Rule. The learned counsel appearing for the respondents waives service of rule. At the request of both the sides the matter is taken up for final disposal.

The grievance of the petitioner is that though under a settlement dated 21.12.1989 the petitioner was entitled to be given compassionate appointment on the ground that his father was relieved from service as he

was declared to be medically unfit the petitioner has been denied such compassionate appointment by communication dated 17.5.1995, a copy of which is at Annexure-H to the petition.

Admittedly, the petitioner's father Shri Bhagwatprasad Manilal Bhatt who was serving as a clerk in the Accounts Branch of the Divisional Branch at Mehsana under the Gujarat State Road Transport Corporation was relieved of his duties on the ground of medical unfitness by the order passed by Mr. D.D. Shukla, Divisional Director of transport, Mehsana Division, on 31.8.1994. The petitioner's father was due to superannuate on 30.9.1994. The respondents have now come up with a case in their affidavit-in-reply that since the petitioner's father was due to superannuate on 30.9.1994 the petitioner could not be given the benefit of compassionate appointment. The settlement, a copy of which is at Annexure-F to the petitioner provides for the benefit of the dependants of an employee who dies in harness and an employee who came to be relieved on the ground of medical unfitness. The petitioner had by his application dated 6.10.1994, a copy of which is at Annexure-E to the petition, referred to the fact that his father was relieved on the ground of medical unfitness by the order dated 31.8.1994, and claimed on that basis that he should be given benefit of compassionate appointment. Since the authorities had accepted the ground of medical unfitness of the petitioner's father while relieving him by the order on 31.8.1994, they now cannot say that the petitioner's father was not medically unfit. It is, however, the case of the respondents that there is a subsequent circular issued to ensure that the process is not abused. The impugned order, however, does not refer to any such ground and does not at all show whether the concerned authority had applied its mind to all the aspects of the matter before denying the benefit of the existing policy regarding compassionate appointment to the petitioner. The impugned order dated 17.5.1995, a copy of which is at Annexure-H to the petition, cannot therefore be sustained and is hereby set aside with a direction that the concerned authority of the respondents should reconsider the case of the petitioner in light of the order dated 31.8.1994 by which his father was relieved accepting his medical unfitness, the application dated 6.10.1994 filed by the petitioner, the relevant Circulars and Rules reflecting the policy as also the settlement dated 21.12.1988 on which reliance is placed and take an appropriate decision in accordance with law expeditiously preferably within four weeks from today. Rule is made absolute with no order as to costs.

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